North Central Regional Transit District (NCRTD)

Resolution 2012-21

Resolution No. 2012-21 Repealing NCRTD Board Resolution No. 2007-13 in Its Entirety and Adopting New Procurement Regulations

WHEREAS, the NCRTD was created through legislative enactment (chapter 65, signed March 21, 2003); and,

WHEREAS, the NCRTD is a sub-division of the State of New Mexico; and,

WHEREAS, the NCRTD was approved and certified by the New Mexico Department of Transportation Commission September 14, 2004; and,

WHEREAS, the NCRTD adopted regulations governing Procurement by Resolution No. 2007-13 on September 14, 2007; and,

WHEREAS, the state statutes governing procurement provide for local public bodies such as the NCRTD to enact their own policies and regulations for public purchasing consistent with state law; and,

WHEREAS, adoption of these Procurement Regulations will provide for the fair and equitable treatment of all persons involved in public purchasing by the NCRTD, to maximize the purchasing value of public funds in procurement and to provide safeguards for maintaining a procurement system of quality and integrity; and,

WHEREAS, the Board of Directors Finance Sub Committee on August 31, 2012 conducted a detailed review of the proposed procurement regulations and recommended that the Board consider the Procurement Regulations as presented.

NOW THEREFORE BE IT RESOLVED THAT the Board of Directors of the NCRTD, hereby adopts the revised Procurement Regulations as attached hereto.

PASSED, APPROVED, AND ADOPTED BY THE GOVERNING BODY OF THE NORTH CENTRAL REGIONAL TRANSIT DISTRICT ON THIS 7th DAY OF SEPTEMBER, 2012.

Daniel Barrone, Chairman

Approved as to form:

Peter Dwyer, Counsel

North Central Regional Transit District

Procurement Regulations

Adopted by Resolution No. 2012-21

ARTICLE I. PROCUREMENT

1. Purpose.

The purpose of this Procurement Policy is to provide for the fair and equitable treatment of all persons involved in public purchasing by the District, to maximize the purchasing value of public funds in procurement and to provide safeguards for maintaining a procurement system of quality and integrity. As provided in Article X, Section 6, of the Constitution of the State of New Mexico, in Section 13-1-98K NMSA 1978, the District may exercise all legislative powers and perform all functions not expressly denied by general law or by other provisions of the District Bylaws. In the absence of the exercise of any such power, the District may act in the manner provided by law. To that end, this article shall govern all purchasing transactions of the District and shall serve to exempt the District from all provisions of the New Mexico Procurement Code, Secs. 13-1-28 through -199 NMSA 1978.

2. Applicability of article provisions.

This article applies to the procurement of goods, services or construction, entered into by the District after the effective date of the adopting resolution. It shall apply to the expenditure of public funds for public purchasing irrespective of the source of the funds. When the procurement requires the expenditure of federal assistance or contract funds, the procurement shall be conducted in accordance with any mandatory applicable federal law and regulations. In the event of any inconsistency between the terms and conditions of this article and those of the federal contract, the latter will govern. The District may comply with the terms and conditions of any grant, gift or bequest that is consistent with law.

(a) These provisions shall apply to all employees or other users authorized to make purchases and all parties whose bid, offer or contract subjects them to these provisions.

(b) Purchasing for private or personal use, or use of the procurement process for such purpose, is prohibited.

(c) Enforcement and penalties – All managers, authorized users, and their supervisors are responsible for knowing, understanding, and adhering to the provisions of this article.

(d) Any person having knowledge of a deviation from these provisions shall report such to the Executive Director.

(e) Criminal violations can result in prosecution or penalties.

3. Exemptions.

(a) No provisions of the Procurement Policy except Section 8 and Article IX, shall apply to the following purchases:

(1) Advertising;

(2) Bond and debt service fees;

(3) Books, periodicals, publications and subscriptions;

(4) Credit or procurement card services;

(5) Employee work-related travel allowances and expenses;

(6) Freight and delivery charges;

(7) Instruction/education, any and all related fees, excluding employee travel;

(8) Insurance premiums;

(9) Legal and related costs incurred by the District , including expert witness costs and interpreters' fees, printing/duplicating costs, arbitrator/mediator, process server, court reporter, transcriptions, and settlements, hearing officer (s), but not including attorney contracts (see (b)(5) below);

(10) Medical services and emergencymedical services for and incidental to utilizing licensed medical professionals, but not including routine medical and psychological exams or lab tests pursuant to drug testing , pre-hire examinations or examinations related to reasonable accommodation;

(11) Memberships and dues;

(12) Travel or shipping by common carrier or by private conveyance or to meals and lodging;

(13) Office equipment repair and maintenance contracts;

(14) Postage or meter refills;

(15) Real property;

(16) Software and firmware updates or upgrades, minor;

(17) Taxes, licenses and filing fees;

(18) Purchases of publicly provided or publicly regulated gas, electricity, water, sewer and refuse collection systems and telecommunications services.

(b) No provisions of the Code, except Section 8 and Article IX, shall apply to the following purchases, provided, however, that such purchases shall require a purchase order:

(1) Procurement of items of goods or services from a federal or state agency or other public entity.

(2) Procurement of goods, services, or construction items under existing contracts and that are procured under any of the following conditions:

a. At a price equal to or less than the contractor's current federal contract price (GSA, FSS), providing the contractor has indicated in writing a willingness to extend such contractor pricing, terms and conditions to the District ; or

b. With a person that has a current contract with the state Purchasing Agent or any other New Mexico governmental entity, for the item, services or construction meeting the same standards and specifications as the items to be procured; or

c. With a person that has a current contract issued under a cooperative purchasing agreement with another public entity; or

d. With a person that has an existing contract, that was subject to competitive solicitation, with another government or agency thereof.

(3) Purchases of motor fuels and compressed fuel gases.

(4) Works of art for public display.

(5) Legal services.

(6) Goods for resale.

(7) Unscheduled repairs which necessitate disassembly diagnostics.

(8) Contracts for televising or documenting public meetings.

(9) The Finance Manager shall retain the documentation relied upon to procure goods, services or construction without seeking competitive bids or proposals for public inspection and auditing purposes in accordance with established District records retention standards.

4. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Architect services means services which require a valid state license related to the art and science of designing and building structures for human habitation or use and may include planning, providing preliminary studies, design, specifications, working drawings and providing for general administration of construction contracts.

Authorized User means an employee who has been approved by management, and has received mandatory training in procurement, to conduct departmental purchasing.

Bid means a formal quote with a pre-determined set of specifications to which a bidder must answer or comply, which details the goods or construction, and the price of the items solicited.

Blind trust means an independently managed trust in which the employee-beneficiary has no management rights and in which the employee-beneficiary is not given notice of alterations in, or other disposition of, the property subject to the trust.

Brand name or equal specification means a specification limited to one or more items by manufacturers' names or catalogue numbers to describe the standard of quality, performance and other significant characteristics needed to meet District requirements, and which provides for the submission of equivalent products.

Brand name specification means a specification limited to one or more items by manufacturers' name or catalogue number.

Change order means a written order to the contractor authorizing an addition, deletion, or revision in the work within the scope of the contract documents, or authorizing an adjustment in the contract price or contract time.

Confidential information means any information which is available to an employee only because of the employee's status as an employee of the District and is not a matter of public knowledge or available to the public on request.

Construction means the process of building, altering, repairing, installing, improving or demolishing any public structure or building, or other public or private improvements of any kind to any public real property. It does not include the routine operation or routine maintenance of existing structures, buildings or real property.

Construction management services may include but are not limited to performance of the following activities by the construction manager: monitoring and coordinating the work, schedules, personnel, equipment and materials of contractors with the activities of the District ; developing and monitoring project costs, change orders and pay requests; insuring compliance with all contract documents and applicable laws, rules and regulations.

Contract means any type of District agreement, regardless of its title, for the procurement of goods, services, or construction. This term shall not include employment agreements or collective bargaining agreements.

Contract modification (bilateral change) means any written alteration in specifications, delivery point, rate of delivery, period of performance, price, quantity or other provisions of any contract accomplished by mutual action of the parties to the contract.

Contractor means any person as defined below who has a contract with the District.

Cooperative purchasing means the use of a properly executed purchasing agreement with one or more additional public agencies to execute procurement.

Cost analysis means the evaluation of factual information concerning the cost of labor, material, overhead and other cost elements including profit which are expected to be incurred or which have been actually incurred by the contractor in performing the contract.

Cost-reimbursement contract means a contract under which a contractor is reimbursed for costs which are allowable and allocable in accordance with the contract terms and the provisions of the procurement code, and a fee or profit, other than a fee based upon a percentage of cost, if any.

District means the North Central Regional Transit District.

Definite quantity contract means a contract which requires the contractor to furnish a specified quantity of goods, services, or construction at or within specified time.

Direct or indirect participation means involvement through decision, approval, disapproval, recommendation, preparation of any part of a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing or in any other advisory capacity.

Dollar levelsmean United States currency, and all amounts shall be considered without New Mexico gross receipts tax (NMGRT).

Employee means an individual drawing a salary or wages from the District , whether appointed or not; any non-compensated individual performing services for the District or any department, or entity established by the executive or legislative branch of the District ; any non-compensated individual serving as an Director or Official Designee of the District .

Engineering services means any service or creative work, the adequate performance of which requires a valid state license and engineering education, training and experience in the application of special knowledge of the mathematical, physical and engineering sciences to such services or creative work as consultation, investigation, evaluation, planning and design of engineering works and systems, engineering studies and the review of construction for the purpose of assuring substantial compliance with drawings and specifications; any of which embrace such services or work, either public or private, in connection with any utilities, structures, buildings, machines, equipment, processes, work systems, projects and industrial or consumer products or equipment of a mechanical, electrical, hydraulic, chemical, pneumatic or thermal nature, insofar as they involve safeguarding life, health or property, and including such other professional services as may be necessary to the planning, progress and completion of any engineering services. Such practice may include but is not limited to the performance of architectural work incidental to the practice of engineering. Engineering services does not include responsibility for construction management services, site conditions, operations, equipment, personnel or the maintenance of safety in the work place.

Evaluation committee means a committee appointed for the purpose of evaluating responses to bids or proposals and to determine, in writing, which is the most advantageous to the District based on the evaluation factors set forth. The evaluation committee members will remain constant through award. Except as specified in Section 38 (b) of this Procurement Policy, the evaluation committee shall be appointed by the department manager for whose department the goods, services or construction are to be purchased.

Financial interest means:

(1) Holding a position in a business as officer, director, trustee, or partner, or holding any position in management, or ownership of more than five percent interest in a business; or

(2) Any interest which may yield, directly or indirectly, any material benefit to an employee or to the employee's immediate family any interest other than an interest in a mutual fund or one held in a blind trust.

Goods means all tangible items, other than real property or construction, having a physical existence including, but not limited to, supplies, parts, equipment, materials, and printed materials.

Gratuity or Kickback means a payment, loan, subscription, advance, and deposit of money, service or anything of more than a nominal value, present or promised, unless consideration of substantially equal or greater value is received.

Immediate family means a spouse, children, parents, brothers and sisters, parent in-law, grandparent, grandchild, and step-relatives in a like relationship.

Indefinite delivery/Indefinite quantity or IDIQ contract means a contract which requires the contractor to furnish an indeterminate quantity of specified goods, services, or construction during a prescribed period of time at a definite unit price or at a specified discount or similar pricing structure from list or catalog prices.

Inventorymeans goods purchased for storage, issue, and ready use by users of the District.

Invitation for Bids or IFB means all documents, whether attached or incorporated by reference, utilized for soliciting competitive sealed bids.

Multiple source award means an award to more than one bidder or offeror of a contract for one or more similar goods, services, or construction.

Person means any natural person, corporation, partnership, sole proprietorship, joint stock company, joint venture, private legal entity, or any federal, state or local political subdivision or entity thereof.

Price or Pricing structuremeans a pre-determined method, such as percentage charged for a category of items; or dollar amount as an itemized price listing, or as related to quantity, unit pack, or similar distinction, for which a vendor is willing to provide the District goods, services, or construction.

Price agreement means a form of IDIQ contract.

Price analysis means the evaluation of price data, without analysis of the separate cost components and profit as in cost analysis, which may assist in determining prices to be paid and costs to be reimbursed.

Pricing data means factual information concerning prices for items substantially similar to those being procured. Prices in this definition refer to offered or proposed selling prices, historical selling prices and current selling prices. The definition refers to data relevant to both prime and subcontract prices.

Procurementmeans the buying, purchasing, renting, leasing, or otherwise acquiring of any goods, services or construction. It also includes all functions that pertain to the procurement process, including description of requirement, and awards of contract.

Professional services means the services of practitioners in a field requiring a state license, or an advanced degree, or a highly specialized education, or a nationally recognized certification; or person providing such services.

Projectmeans an activity with an explicit goal, that has a defined beginning and an end, that has at least one concrete deliverable, that has a logical sequence of activities that produce the deliverable(s), and that is not a repetition of an activity that has been previously planned and performed.

Project Managermeans the person assigned the responsibility for overall supervision of a Project. The responsibility includes, but is not limited to, budget monitoring, change order control, project schedule, quality control, approving progress payments, and insuring that work progresses in accordance with requirements set forth in the contract documents.

Proposalmeans a quote which may include open-ended, substantially bidder-determined specifications for how the bidder will provide the item(s), or different weights on different factors for evaluation; which details the goods, services, or construction, and the price of the items solicited.

Public agency or entity means a public entity subject to or created by any federal, state, or local governmental body.

Purchase order or PO means the legally binding document issued by the Finance Office, which has been appropriately approved before submission to a vendor, that authorizes a contractor or vendor to deliver goods, services or construction. There are two types:

(1) Regular (fixed amount and cost) – one which is used to procure a predetermined quantity at a predetermined price; and

(2) Open or Blanket Purchase Order – one which is used for anticipated numerous or recurring small purchases at a predetermined price or pricing structure for up to one year. It is a type of IDIQ contract.

Qualified products list means an approved list of goods, services or construction items described by model or catalogue numbers which, prior to competitive solicitation, the Purchasing Agent has determined will meet the applicable specification requirements.

Quote means a binding, good-faith statement of the price at which a vendor is willing to provide to the District required goods, services, or construction.

Request for Information / Interest or RFImeans all documents, whether attached or incorporated by reference, utilized for soliciting information to be used in developing specifications or a scope of work for services for an IFB, RFP, or RFQ, or for gauging interest in a future solicitation.

Request for Proposals or RFP means all documents, whether attached or incorporated by reference, utilized for soliciting proposals for goods, services or construction.

Request for Qualifications or RFQmeans all documents, whether attached or incorporated by reference, utilized for soliciting Statements of Qualifications for professional services.

Responsible bidder or offeror means a person, who has been determined by the Purchasing Agent or evaluating committee to have the capability in all respects to perform fully the contract requirements, including the financial resources, personnel, service reputation and experience, capacity, production or service facilities, equipment and credit which will ensure satisfactory delivery of the goods, services or construction described in the IFB or in the RFP.

Responsive bidder means a person who has submitted a bid that conforms in all material respects to the requirements set forth in the IFB. Material respects of a bid may include but are not limited to, price, quality, quantity, and delivery requirements.

Responsive offeror means a person who has submitted an offer that conforms in all material respects to the requirements set forth in the RFP.

Rough order of magnitude estimatemeans an approximation without detailed data backup; has a range of accuracy equal to -25% to +75%.

Servicesmeans the furnishing of labor, time or effort, by contractors other than those providing professional services, services of employees of a state agency or local public body, or construction.

Software or firmware update or upgrade means an improvement to the functionality or security of computer software. There are two basic types:

(1) Minor – one in which the underlying software remains the same, and is usually identified by an incremental number change, such as ".1" or ".02".

(2) Major – one in which the software itself changes, either to a new operating system or as a new version, typically identified such as "Version 8" or "Name 2012".

Sole source selection means a one-time procurement which is subject to the following conditions:

(1) A good-faith review of available sources has been conducted, and

(2) A Letter or Memo of Justification is provided to the Finance Manager and Executive Director as documentation detailing the reason(s) why the source is the only one in the USA that provides the good(s) or service(s).

Specificationmeans any description of the physical or functional characteristics or of the nature of a good, service or construction item. It may include a description, any requirement for inspecting, testing or preparing a good, service or construction item for delivery.

Statement of Qualifications or SOQ means a formal documentation of experience or expertise for the purpose of obtaining information to permit the evaluation of the person most highly qualified to provide the required services.

Surveying services means any service or work, the substantial performance of which involves the application by a state-licensed surveyor of the principles of mathematics and the related physical and applied sciences.

Task order or Job ordermeans a discrete assignment of a specific set of tasks under an Indefinite Delivery/Indefinite Quantity contract, each order capped at a not-to-exceed amount.

ARTICLE II. OFFICE OF THE PURCHASING AGENT

5. Establishment.

The responsibility for administration of the provisions of this policy shall be under the Executive Director. The Executive Director shall have the responsibility and authority to insure that all provisions of law and this policy are followed and shall be authorized to issue any supplemental regulations consistent with this policy deemed necessary to administer, manage or clarify this Policy. Supplements issued by the Executive Director shall be attached to and made a part of this Policy. The Executive Director shall be responsible for having the knowledge to insure that all provisions of this Policy and all other purchasing concerns and activities of the District are appropriate and consistent with the most current, generally accepted purchasing techniques, and all provisions of the law.

There shall be a Purchasing Agent. The Purchasing Agent shall be the Executive Director who is the principal public purchasing official and whom may delegate these responsibilities to other staff as he may deem necessary and whoherein will be known as the Purchasing Agent for purposes of this Policy.

6. Authority and duties.

(a) *Principal public purchasing official.* Except as otherwise provided in this Article, the Purchasing Agent shall serve as the principal public purchasing official for the District and shall be responsible for conducting or supervising the procurement of goods, services or construction in accordance with this Article, as well as the disposal of surplus goods.

(b) *Duties.* In accordance with this article, and subject to the supervision of the Executive Director or his designee, the Purchasing Agent shall:

(1) Award purchase orders for procurement of all goods, services or construction needed by the District , upon approval of departments or the Executive Director as required consistent with operational procedures;

(2) Develop procedures to sell, trade, or otherwise dispose of surplus goods belonging to the District ;

(3) Establish and maintain programs for specifications development, contract administration and inspection and acceptance, in cooperation with the public agencies using the goods, services or construction;

(4) Conduct mandatory training sessions for new authorized users, and periodic training for all current authorized users;

(5) Review all procurement requests for correctness, appropriateness, and compliance with this Policy; and

(6) Establish and administer a District Procurement Card program.

(c) *Operational procedures.* Consistent with this article, the Purchasing Agent may adopt operational procedures relating to the execution of his or her duties.

7. Delegations to other District officials.

The Purchasing Agent may delegate authority to purchase certain goods, services or construction items to other District officials, if he or she deems such delegation necessary for the effective procurement of those items. This delegation will be in writing describing the authority granted. Notwithstanding the provisions of Section 6, procurement authority with respect to certain goods, services or construction may be delegated to other District officials by the Executive Director. This delegation will be in writing describing the authority granted.

8. Authority to execute contracts.

(a) *Purchase orders.* The District Board hereby delegates to the Executive Director the authority to execute purchase orders and bind the District.

(b) *Contracts.*

(1) For contracts the District Board hereby delegates to the Executive Director or designee the authority to execute the following contracts and bind the District:

a. Contracts other than purchase orders as provided in this Section, in the amount of $100,000.00 or less;

b. Any contract for the purchase of goods or construction in any amount less than or equal to the funding budgeted and specifically appropriated by the District Board for the acquisition or project;

c. Change orders or contract modifications to existing contracts, provided that the total amount after execution of the change order or contract modification does not exceed the funds budgeted or the adjusted budget and specifically appropriated for the project.

(2) The authority granted in Subsections (b) (1) is subject to the following conditions:

a. The goods, services, or construction was procured in accordance with this chapter as determined by the Purchasing Agent;

b. The contract is in a form acceptable to the District'sLegal Counsel;

c. There is no local, state or federal requirement that the chief elected official or other official must sign the contract;

d. Approval by the District Board if the purchase is in excess of $100,000.00.

(3) The Executive Directors power to delegate authority to execute contracts is limited to the contract amount of $100,000.00, exclusive of NMGRT, or less.

(4) All other contracts must be approved by the District Board prior to execution by the Executive Director, as appropriate.

ARTICLE III. SOURCE SELECTION AND CONTRACTS

9. Competitive sealed Invitations for Bids (IFBs).

The Purchasing Agent shall be responsible for developing procedures for processing, recording and securing all documents for bids. Confidential information shall be identified as such by the bidder, and subject to state laws regarding its handling. The user department manager shall appoint the bid evaluation committee and committee chairperson.

(a) *Conditions for use.* All contracts of the District shall be awarded by competitive sealed bidding except as otherwise provided herein.

(b) *Invitation for bids.* An IFB shall be issued and shall include specifications and a sample of the standard contractual terms and conditions applicable to the procurement.

(c) *Public notice.* Adequate public notice of the IFB shall be given a reasonable time, but not less than 15 calendar days prior to the date set for opening of the bids. Resolicitations shall be given public notice for a minimum of 10 days prior to the date set for opening of the bids. The publication of such notice shall be in a newspaper of general circulation within the District. Such public notice shall state the title, place, date and time of bid opening.

(d) *Bidders list.* The Purchasing Agent shall send copies of the IFBs to include, but not be limited to, those persons that have formally requested from the District the IFB documents for submitting bids for particular categories of goods, or construction, and which have paid in advance any required fees. The Purchasing Agent may set fees or deposits for different IFBs. Such fees shall be related to the actual direct cost of furnishing copies of the IFBs to the prospective bidders. Any deposit, less delivery charges, shall be refunded if the documents for bid are returned in usable condition within the time specified in the documents for bid, which time limits shall be no less than ten calendar days after the date of the bid opening. All forfeited deposits shall be credited to the District.

(e) *Bid opening.* Bids shall be opened publicly in the presence of two or more District employees and any public present, including bidders, at the time and place designated in the IFB. The names of the witnesses will be made a part of the record, and any publicpresent, including bidders or offerors, will be given the option to record their names. The amount of each bid and such other relevant information as the Purchasing Agent deems appropriate consistent with the Inspection of Public Records Act, § 14-2-1 et seq., NMSA 1978, together with the name of each bidder, shall be recorded. The record and each bid shall be open to public inspection in accordance with the Inspection of Public Records Act.

(f) *Bid acceptance and bid evaluation.* Bids shall be unconditionally accepted without alteration or correction, except as authorized in this Article. Bids shall be evaluated based on the requirements set forth in the IFB, which may include criteria to determine acceptability such as inspection, testing, quality, workmanship, delivery and suitability for a particular purpose. Those criteria that will affect the bid price and be considered in evaluation for award shall be objectively measurable, such as discounts, transportation costs, and total of life cycle costs. The IFB shall set forth the evaluation criteria to be used. Only criteria that are set forth in the IFB may be used in bid evaluation. Interviews are to be used only for the purpose of clarification. The final evaluation results shall be forwarded to the Purchasing Agent.

(g) *Withdrawal of bids and cancellation of awards.* Bidder may withdraw its bid by written notice and received by Purchasing Agent prior to bid opening. After bid opening, no changes in bid prices or

other provisions of bids prejudicial to the interests of the District or fair competition shall be permitted. In lieu of bid correction, a low bidder alleging a material mistake of fact may be permitted to withdraw its bid if:

(1) The mistake is clearly evident on the face of the bid document; or

(2) The bidder submits evidence which clearly and convincingly demonstrates that a mistake was made.

Any decision to permit correction before withdrawal of bid or to cancellation of awards or contracts based on bid mistakes shall be supported by a written determination made by the Purchasing Agent including the grounds upon which the determination was made.

(h) *Negotiations.* If the low responsive and responsible bid for a construction project exceeds available funds as certified by the Finance Manager and such bid does not exceed such funds by more than ten percent (10%), the Purchasing Agent is authorized, when time or economic considerations preclude resolicitation of work of a reduced scope, to negotiate an adjustment of the bid price with the low responsive and responsible bidder in order to bring the bid within the amount of available funds..

(1) Should negotiation fail to reduce the cost, the Purchasing Agent may then negotiate with the next lowest bidder;

(2) Should negotiation again fail bidder to reduce the cost, the Purchasing Agent may then negotiate with the next lowest or cancel the bid.

(i) *Award.* The contract shall be awarded with reasonable promptness by appropriate written notice to the lowest responsible and responsive bidder whose bid meets the requirements and criteria set forth in the IFB. An award may be made on an all-or-nothing or multiple source basis, consistent with Section 19 (b), whichever is the most advantageous to the District .

(j) *Multistep sealed bidding.* When it is considered impractical to prepare initially a purchase description to support an award based on price, an IFB may be issued requesting the submission of unpriced offers, which may include a separate sealed price proposal, or may be followed by an IFB limited to those bidders whose offers have been determined to be technically acceptable under the criteria set forth in the first solicitation.

(k)*Identical bids.* When competitive sealed bids are used and two or more of the bids submitted are identical in price and are the low bid, the Purchasing Agent may:

(1) Award pursuant to the multiple source award provision of section 19 (b);

(2) Award by lottery or game of chance of the Purchasing Agent's choosing to one of the identical low bidders; or

(3) Reject all bids and re-solicit bids for the required goods, services, or construction.

Competitive sealed Requests for Proposals (RFPs) and Qualifications (RFQs).

The Purchasing Agent shall be responsible for developing procedures for processing, recording and securing all documents for RFPs and RFQs. Confidential information shall be identified as such by the proposer, and subject to state laws regarding its handling. The user department director shall appoint the bid evaluation committee and committee chairperson.

10. ***Conditions for Use of RFP.*** When the Purchasing Agent determines that, based on written justificationprovided by the user department, the use of competitive sealed bidding is either not practical or not advantageous in seeking the best value to the District, a contract may be entered into by use of RFPs.

    (1) Issuing the RFP. Proposals shall be solicited through an RFP which shall be issued and shall include the specifications for the goods, services or construction, a sample copy of the proposed contract terms applicable to the procurement unless waived by the Purchasing Agent, additional requirements specific to a particular procurement as may be in the best interest of the District, the location where proposals are to be received and the date, time and place where proposals are to be received.

    (2) Multistep RFPs. When, because of the unique set of qualifications needed the Purchasing Agent considers it impractical to prepare initially a solicitation which includes price, an RFP may be issued requesting the submission of Statement of Qualifications (SOQs) which include a separate sealed price proposal, or may be followed by an RFP limited to those offerors whose offers have been determined by the evaluation committee to be qualified under the criteria set forth in the first solicitation.

    (3) Public notice. Adequate public notice of the RFP shall be given in the same manner as provided in Section 9 (c).

    (4) Offerors list. The Purchasing Agent shall send copies of each RFP to at least those persons that have formally requested from the purchasing office the documents for submitting a proposal. Registration fees or deposits may be required as provided in section 9 (d).

    (5) Receipt of proposals. Proposals shall be handled so as to prevent disclosure of the identity of any offeror or the contents of any proposal to competing offerors during the process of negotiation. A register of proposals shall be prepared containing the name of each offeror, the number of modifications received, if any, and a description sufficient to identify the item offered. The register of proposals shall be open for public inspection only after contract award.

    (6) Evaluation factors. The RFP shall state the relative weight of price and other evaluation factors.

    (7) Evaluation of the RFP. Interviews are only for the purpose of clarification, and may be used for adjusting the initial score. The final evaluation results shall be forwarded to the Purchasing Agent.

(8) Discussion with responsible offerors and revisions to proposals. As provided in the RFP, discussions may be conducted with responsible offerors who submit proposals determined to be reasonably likely to be selected for award for the purpose of clarification to ensure full understanding and conformation with the solicitation requirements for the purpose of obtaining best and final offers. In conducting discussions, there shall be no disclosure of any information derived from proposals submitted by finalist offerors.

(9) Award shall be made to the responsible offeror whose proposal is determined in writing by the evaluating committee to be the most advantageous to the District, taking into consideration the evaluation factors set forth in the request for proposals. No other factors or criteria shall be used in the evaluation. The contract file shall contain the written basis on which the award is made.

11. ***Conditions for use of RFQs.*** When the Purchasing Agent determines in writing, based on written justification provided by the user department that the use of an IFB or RFP is either not practical or not advantageous to the District in soliciting professional services, a contract may be entered into by use of competitive sealed RFQs. The Purchasing Agent shall publicly issue an RFQ for professional service providers to submit a Statement of Qualifications and to negotiate such contracts on the basis of demonstrated competence and qualifications and performance date.

(1) Issuing and processing the RFQ. The RFQ will be handled in the same manner as in subsections (1) through (7) of Section 10(a) above except for a price proposal, which is not used.

(2) Selection process. The evaluation committee shall select, ranked in the order of their qualifications, the person(s) deemed to be the most highly qualified to perform the required services, after considering the following criteria:

a. Specialized design or technical competence of the person regarding the type of services required;

b. Capacity and capability of the person, including any consultants, their representatives, qualifications, and locations, to perform the work, within the time limitations;

c. Past record of performance on contract with government agencies or private industry with respect to such factors as control of costs, quality of work and ability to meet schedules; and/or

d. Any other criteria as deemed necessary.

(3) Negotiation. Upon selection of the finalist(s), the Purchasing Agent or designee shall negotiate a contract with the person considered to be the most qualified for the required services at compensation which the Purchasing Agent or designee determines in writing to be fair and reasonable to the District . In making this decision, the Purchasing Agent or designee shall take into account the estimated value, the scope, the complexity and the professional nature of the services to be rendered. Should the Purchasing Agent or designee be unable to negotiate a contract at a fair and reasonable price with the selected person, the valuation committee shall select additional persons in order of their competence and qualifications, and

the Purchasing Agent or designee shall continue negotiations with the additional persons in the order of their competence and qualifications in accordance with this section until an agreement is reached.

12. Small purchases.

(1) *Generally.* Any purchase may be made in accordance with the small purchase procedures authorized in this Section. A purchase shall not be artificially divided so as to constitute a small purchase under this Section. Professional services not exceeding $50,000.00 may be but are not required to be conducted by competitive written proposal.

(2) *Any purchases not exceeding $10,000.00, exclusive of applicable gross receipts tax.* The Purchasing Agent shall adopt operational procedures for making small purchases not exceeding $10,000.00. Such operational procedures shall provide for obtaining adequate and reasonable competition for the goods, services or construction being purchased, properly account for the funds expended and facilitate an audit of the small purchases made.

(3) *Purchases from $10,000.01 to $35,000.00, exclusive of applicable gross receipts tax.* Insofar as it is practical, the purchaser shall solicit no less than three quotations. Award shall be made to the person offering the lowest acceptable quotation. The names of the persons from which quotations were solicited, and the date and the amount of each quotation, shall be recorded and maintained in accordance with established District records retention standards.

(4) *Procurement of professional services not exceeding $50,000.00, exclusive of applicable gross receipts tax.* Professional services having a value not exceeding $50,000.00 may be procured without competitive sealed bids or proposals. For Professional Services the department may determine available sources and negotiate directly with the prospective vendors. Competitive informal proposals or quotes are recommended in order to obtain the services in the best interest of the District, but are not required.

13. Sole source procurement.

A contract may be awarded without competition when the Purchasing Agent determines in writing, after conducting a good faith review of available sources, that there is only one source for the required goods, service or construction item in the USA. A sole source selection may also result when there is only one respondent to an RFI as in Section 33(c)(2). The Purchasing Agent or designee shall conduct negotiations, as appropriate, as to price, delivery and terms. A record of these procurements shall be maintained as a public record and shall list each contractor's name, the amount and type of each contract, a listing of the items procured under each contract, a letter or memo of justification documenting the reason for the selection of the source, and the identification number of each contract file.

14. Emergency procurements.

The Purchasing Agent may make or authorize others to make emergency procurements of goods, services or construction items when there exists a threat to public health, welfare or safety, provided that such emergency procurements shall be made with such competition as is practicable under the circumstances. A written determination of the basis for the emergency and for the selection of the particular contractor shall be included in the contract file. As soon as practicable, a record of each emergency procurement shall be made and shall set forth the contractor's name, the amount and type of

the contract, a listing of the items procured under the contract and the identification number of the contract file.

15. Cancellation of solicitations.

An IFB, an RFP or other solicitation may be canceled, or any or all bids or proposals may be rejected when it is in the best interests of the District. The reasons therefore shall be made part of the file. Each solicitation issued by the District shall state that the solicitation may be canceled and that any bid or proposal may be rejected in whole or in part when in the best interest of the District. Notice of cancellation shall be sent to all respondents. The notice shall identify the solicitation, explain the reason for cancellation and, where appropriate, explain that an opportunity will be given to compete on any resolicitation or any future procurements of similar items. Reasons for rejection shall be provided upon request by unsuccessful bidders or offerors.

16. Responsibility of bidders and offerors.

Determination of non-responsibility. If a bidder or offeror is found to be non-responsible, the Purchasing Agent shall prepare a written determination of nonresponsibility setting forth the basis of the finding. The unreasonable failure of a bidder or offeror to supply information promptly in connection with an inquiry with respect to responsibility may be grounds for a determination of nonresponsibility with respect to such bidder or offeror. The final determination shall be made part of the contract file and be made public record.

17. Cost or pricing data.

(a) *Required submissions relating to the award of contracts.* A prospective contractor shall submit cost or pricing data when the contract is expected to exceed $500,000.00 and is to be awarded by competitive sealed proposals (Section 10) or by sole source procurement (Section 12). The submission of cost or pricing data relating to the award of a contract is not required when:

(1) The contract price is based on competitive bid;

(2) The contract price is based on established catalog prices or market prices;

(3) The contract price is set by law or regulations;

(4) The contract is for professional services;

(5) The contract is awarded pursuant to the Public Building Energy Efficiency Act;

(6) The Purchasing Agent determines in writing that the requirements of this Section may be waived, and the determination states the reasons for such waiver.

(b) *Required submissions relating to change orders or contract modifications.* A contractor shall submit cost or pricing data prior to the pricing of any change order or contract modification, including adjustment to contracts awarded by competitive sealed bidding, whether or not cost or pricing data was required in connection with the initial pricing of the contract, when the change or modification involves aggregate increases or aggregate decreases in cost, plus applicable profits, that are expected to exceed ten percent (10%) of

original contract price. The submission of cost or pricing data relating to the pricing of a change order or contract modification is not required when:

(1) An unrelated and separately priced adjustment for which cost or pricing data would not be required are consolidated for administrative convenience; or

(2) The Purchasing Agent determines in writing that the requirements of this Section may be waived, and the determination states the reasons for such waiver.

(c) *Certification requirements.* A contractor, actual or prospective, required to submit cost or pricing data in accordance with this Section, shall certify that, to the best of his or her knowledge and belief, the cost of pricing data submitted was accurate, complete and current as of a mutually specified date prior to the award of the contract or the pricing of the change order or contract modification.

(d) *Price adjustment provision required.* Any contract award, change order or contract modification under which the submission and certification of cost or pricing data are required shall contain a provision stating that the price to the District , including profit or fee, shall be adjusted to exclude any significant sums by which the District finds that such price was increased because the contractor-furnished cost or pricing data was inaccurate, incomplete or not current as of the date agreed upon between the District and the contractor.

18. Cost or price analysis.

(a) A cost analysis or price analysis, as appropriate, shall be conducted by the evaluation committee or Project Manager prior to award of the contract when required under section 16. A written record of such analysis shall be made part of the contract file.

(b) Cost analysis includes the appropriate verification of cost or pricing data, and the use of this data, as well as any available historical comparative data, to evaluate:

(1) Specific elements of costs;

(2) The necessity of certain costs;

(3) The reasonableness of amounts estimated for the necessary cost;

(4) The reasonableness of allowances for contingencies;

(5) The basis used for allocation of indirect costs;

(6) The appropriateness of particular indirect costs to the proposed contract; and

(7) The reasonableness of the total cost or price.

(c) Price analysis shall be made upon the following criteria for the same or similar items or services:

(1) Price submissions of prospective bidders or offerors in the current procurement;

(2) Prior price quotations and contract prices charged by the bidder, offeror or contractor;

(3) Prices published in catalogues or price list;

(4) Prices available on the open market; or

(5) In-house estimates of cost.

19. Bid and performance bonds on goods or service contracts.

Bid and performance bonds or other security may be requested for goods and/or service contracts as the Purchasing Agent or department manager deems advisable to protect the District's interests. Any such bonding requirements shall be set forth in the solicitation. Bid or performance bonds shall not be used as a substitute for determination of a bidder's or offeror'sresponsibility.

20. Types of contracts.

General authority. Subject to the limitations of this Section, any type of contract which is appropriate to the procurement and which will promote the best interests of the District will be used, provided that the use of a cost-plus-a-percentage-of-cost contract is prohibited. A cost reimbursement contract may be used only when a determination is made by the Purchasing Agent that such a contract is likely to be less costly to the District than any other type or that it is impracticable to obtain the goods, service or construction item required except under such a contract.

(a) *Multi-term contracts.*

(1) Specified period. A contract can be for multiple fiscal periods, as needed. Unless otherwise provided by law, a contract for goods or services may be entered into for any period up to four years, subject to the following provisions:

a. that the term of the contract and conditions of renewal or extension, if any, are included in the solicitation;

b. renewals or extensions may be for up to three consecutive one-year periods;

c. funds are available for the first fiscal period at the time of contracting. Payment and performance obligations for succeeding fiscal periods shall be subject to the availability and appropriation of funds thereof;

d. a multi-term contract that exceeds the Executive Director's purchasing authority as provided in Section 8 of these regulations over the cumulative time period of a multi-year contract shall be brought to the District Board for approval;

e. construction contracts are exempt from the limit.

(2) Determination prior to use. Prior to the utilization of a mult-iterm contract, the Purchasing Agent shall determine that:

a. Estimated requirements cover the period of the contract and are reasonably firm and continuing; and

b. Such a contract will serve the best interests of the District by encouraging effective competition or otherwise promoting economies in District procurement.

(3) Cancellation due to unavailability of funds in succeeding fiscal periods. When funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal period, the contract shall be canceled and the contractor shall be reimbursed for the reasonable value of any nonrecurring cost incurred but not amortized in the price of the goods or services delivered under the contract. Such cost of cancellation may be paid only from any appropriations available for such purposes.

(b) *Multiple source contracting.*

(1) Generally. A multiple source award is an award of a contract for one or more similar goods or services to more than one bidder or offeror. The obligation to order the District's actual requirements is limited by the provision of the Uniform Commercial Code, NMSA 1978, § 55-1-101 et seq.

(2) Limitations on use. A multiple source award may be made when an award to two or more bidders or offerors for similar products is necessary for adequate delivery, service or product compatibility. Any multiple source awards shall be made in accordance with the provisions of Sections 9 through -11, and 13, as applicable. Multiple source awards shall not be made when a single award will meet the District's needs without sacrifice of economy or service. Awards shall not be made for the purpose of dividing business, making available product or supplier selection to allow for user preference unrelated to utility or economy, or avoiding the resolution of the bids. Any such awards shall be limited to the least number of suppliers necessary to meet valid requirements.

(3) Contract and solicitation provisions. All eligible users of the contract shall be named in the solicitation, and it shall be mandatory that the actual requirements of such users that can be met under the contract be obtained in accordance with the contract; provided, however, that:

a. The District shall reserve the right to take bids separately if a particular quantity requirement arises which exceeds its normal requirement or an amount specified in the contract; or

b. The District shall reserve the right to take bids separately if the Purchasing Agent approves a finding that the goods or service available under the contract will not meet a special need of the District.

(4) Intent to use. The District shall, in the solicitation document, reserve the right to make such an award.

(5) Determination required. The Purchasing Agent shall make a written determination setting forth the reasons for a multiple source award, which shall be made a part of the procurement file.

(c) *Price agreements.*

(1) Generally. A price agreement is an award of an Indefinite Delivery/Indefinite Quantity contract for one or more similar goods or services to one or more bidder(s) or offeror(s). It is used for anticipated numerous or recurring purchases at a predetermined price or pricing structure over an extended time period. Task orders, once initiated within the contract term, will continue until the completion of the specific task without regard to term of the basic contract unless otherwise stipulated. Since a Price Agreement does not have specific delivery of goods or services required at inception, individual task orders or purchases shall be approved by the appropriate person in accordance with the approval levels in Section 8.

a. Limitations on Use. A price agreement may be awarded subject to the provisions in sections 9 through -12 and19 (b).

b. Intent to use. The District shall, in the solicitation document, reserve the right to make such an award.

(d) *Administrative Grouping of Requirements for Inventory*

(1) Generally. Administrative grouping of requirements for inventory recognizes that inventory replenishments or purchases are actually an aggregate of multiple discreet requirements. With this administrative grouping, each purchase order line stands on its own with respect to approval levels in section 8.

(2) Limitations on use. This method only pertains to items of inventory.

21. Contract clauses and administration.

(a) *Contract clauses.* All the District contracts for goods, service or construction shall include provisions necessary to define the responsibilities and rights of the parties to the contract. The Purchasing Agent, after consultation with the District Legal Counsel, may issue clauses appropriate for goods, service or construction contracts, addressing among others the following subjects:

(1) The unilateral right of the District to order, in writing, changes in the work within the scope of the contract;

(2) The unilateral right of the District to order, in writing, temporary stoppage of the work or delaying performance that does not alter the scope of the contract;

(3) Variations occurring between estimated quantities or work in contract and actual quantities;

(4) Defective pricing;

(5) Liquidated damages;

(6) Specified excuses for delay or nonperformance;

(7) Termination of the contract for default;

(8) Termination of the contract in whole or in part for the convenience of the District ;

(9) Suspension of work on a construction project ordered by the District ;

(10) Site conditions differing from those indicated in the contract or ordinarily encountered, except that a differing site conditions clause need not be included in a contract when:

a. The contract is negotiated;

b. The contractor provides the site or design; or

c. The parties have otherwise agreed with respect to the risk of differing site conditions.

d. Insurance.

(b) *Price adjustments.* Adjustments in price resulting from the use of contract clauses by Subsection (a) of this section shall be computed in one or more of the following ways:

(1) By agreement on a fixed price adjustment before commencement of the pertinent performance or as soon thereafter as practicable;

(2) By unit prices specified in the contract or subsequently agreed upon;

(3) By the costs attributable to the events or situations under such clauses with adjustments of profit or fee, all as specified in the contracts or subsequently agreed upon;

(4) In such other manner as the contracting parties may mutually agree upon;

(5) In the absence of agreement by the parties, a unilateral determination by the District of the costs attributable to the events or situations under such clauses with adjustment of profit or fee as computed by the District , as accounted for in accordance with generally accepted cost accounting principles and subject to the provisions of Article VII of this Chapter.

(6) A contractor shall be required to submit cost or pricing data if any adjustment in contract price is subject to the provisions of section 16.

(c) *Standard clauses and their modification.* The Purchasing Agent, after consultation with the District'sLegal Counsel, may establish standard contract clauses for use in the District contracts. If the Purchasing Agent establishes any standard clauses addressing the subjects set forth in Subsection (a) of this section, such clauses may be varied, provided that any variations are supported by a written determination stating the circumstances justifying such variations.

(d) *Advance payment clause permitted.* Advance payment may be permitted when, in consultation with the District's Legal Counsel, the Purchasing Agent authorizes a contract under Section3 (b)4 Procurement of goods, services, or construction items under existing contract, and such prior contract relied upon contains an advance payment clause.

22. Cooperative procurement authorized.

The District may join, participate in, sponsor, or administer a cooperative procurement agreement for the procurement of goods, services or construction with any other federal agency, state agency, tribal entities or other public entity.

23. Cost reimbursement provisions.

Cost reimbursement contracts funded by federal agencies shall satisfy the requirements of 41 CFR 1-15.

24. Right to inspect plant.

The District may, at reasonable times, inspect the part of the plant, place of business or worksite of a contractor or subcontractor at any tier which is pertinent to the performance of any contract awarded or to be awarded by the District.

25. Right to audit records.

(a) *Audit of cost or pricing data.* The District may, at reasonable times and places, with written notice, audit the records of any contractor who has submitted cost or pricing data pursuant to Section 16, to the extent that such records are pertinent to such cost or pricing data. Any person who receives a contract, change order, or contract modification for which cost or pricing data is required shall maintain such records that are pertinent to such cost or pricing data for six years from the date of final payment under the contract.

(b) *Contract audit.* The District shall be entitled to audit the records of a contractor or a subcontractor at any tier under negotiated contract or subcontract to the extent that such records are pertinent to the performance of such contract or subcontract. Such records shall be maintained by the contractor and subcontractor(s) for a period of six years from the date of final payment under the prime contract.

26. Reporting of anticompetitive practices.

When for any reason collusion or other anticompetitive practices are suspected among any bidders or offerors, a notice of the relevant facts shall be transmitted to the District's Legal Counsel for forwarding to the state attorney general.

27. District procurement records.

(a) *Public access to procurement information.* Procurement information shall be public record to the extent provided in the Inspection of Public Records Act.

(b) *Contract file.* All determinations and other written records pertaining to the solicitation, award or performance of a contract shall be maintained for the District in a contract file by the Purchasing Agent. The documents attached to this policy are illustrative only and are subject to modification and change at the discretion of the Purchasing Agent.

(c) *Retention of procurement records.* All procurement records shall be recorded and maintained in accordance with established District records retention standards. All federal contracts shall be maintained for three years after the closeout date of the contract.

ARTICLE IV. SPECIFICATIONS

28. Maximum practicable competition.

All specifications shall be drafted so as to promote overall economy for the purposes intended and encourage competition in satisfying the District's needs, and shall not be unduly restrictive. The policy enunciated in this Section applies to all specifications including, but not limited to, those prepared for the District by architects, engineers, designers and draftsmen.

29. Qualified products list.

The Purchasing Agent may develop a qualified products list, in accordance with Article V of this Chapter. Should any product be available only from a sole source, the using department and purchasing office must review specifications at least annually and make a written determination as to the sole source status. The qualified products list status shall in no way be used to limit competition.

30. Brand name or equal specifications.

(a) *Use.* Brand name or equal specifications may be used when the Purchasing Agent determines in writing that:

(1) No other design or performance specification or qualified products list is available;

(2) Time does not permit the preparation of another form or purchase description not including a brand name specification;

(3) The nature of the product or the nature of the District 's requirements makes use of a brand name or equal specification suitable for the procurement; or

(4) Use of a brand name or equal specifications is in the District's best interests.

(b) *Designation of several brand names.* Brand name or equal specifications shall seek to designate brands as are practicable as "or equal" references and shall further state that substantially equivalent products to those designated will be considered for award.

(c) *Required characteristics.* Unless the Purchasing Agent determines that the essential characteristics of the brand names included in the specifications are commonly known in the industry or trade, brand name or equal specification shall include a description of the particular design, functional or performance characteristics which are required.

(d) *Nonrestrictive use of brand name or equal specifications.* Where a brand name or equal specification is used in a solicitation, the solicitation shall contain explanatory language that the use of a brand name is for the purpose of describing the standard quality, performance and characteristics desired and is not intended to limit or restrict competition.

(e) *Exemption.* Small purchases described in Section 11(b) are exempt from this provision.

31. Brand name specification.

(a) *Use.* Since use of a brand name specification is restrictive of product competition, it may be used only when the purchaser has justified and the Purchasing Agent makes a written determination that only the identified brand name item will satisfy the District 's needs.

(b) *Competition.* The Purchasing Agent shall seek to identify sources from which the designated brand name item can be obtained and shall solicit such sources to achieve whatever degree of price competition is practicable. If only one source can supply the requirement, the procurement shall be made under Section 12.

(c) *Exemption.* Small purchases described in Section 11(b) are exempt from this provision.

32. Item Life-cycle specifications.

The District may use item life-cycle specifications in evaluating bids if such method is required in the IFB. Life-cycle specifications shall use criteria to take into consideration the initial purchase price, life, output, maintenance or consumption, disposal value, complexity of operation, required training and other factors contributing to the overall cost of an item.

33. Total cost specifications.

The District may use total cost specifications in evaluating bids if such method is required in the IFB. Total cost specifications criteria is the same as life-cycle specifications, except the disposal value has been predetermined and is included in the contract as an option. This option is to trade in at this predetermined fixed price, or sell at the District's option.

34. Complex specifications.

In the event a department develops a need for goods, service or construction with a complex set of specifications or scope of work and the department desires assistance to develop them, the department shall request in writing that the Purchasing Agent issue a Request for Information (RFI).

(a) The user department shall provide as much information as feasible to the Purchasing Agent for development of the RFI;

(b) The Purchasing Agent shall prepare the RFI and process it as in Section10;

(c) Upon receipt of the Information:

(1) If from multiple sources, the user department shall make a good faith effort to combine the various inputs into a coherent whole; or

(2) If from only one source, the department may use the document as the basis for a sole source justification.

(3) The information assembled in Subsection (c) (1) above shall be used as the basis for an IFB or RFP.

ARTICLE V. PROCUREMENT OF CONSTRUCTION MANAGEMENT AND CONSTRUCTION SERVICES

35. Selection of construction management. The Project Manager shall have discretion to:

(a) select the appropriate method of construction management for a particular project. In determining which method to use, the Project Manager shall consider the District 's requirements, its resources, and the potential contractor's capabilities;

(b) select which method of solicitation for construction management applies for a particular project, either as a single-step or multi-step RFP as in Section 10(a), or as an RFQ in Section 10(b) Article III.

36. Bid security.

(a) *Requirement.* Bid security shall be required for all competitive sealed bidding for construction contracts when the price is estimated by the using agency to exceed $50,000.00. Bid security shall be a bond provided by a surety company authorized to do business in the state, or the equivalent in cash, or otherwise supplied in a form satisfactoryto the District. Such bonds on construction contracts under $50,000.00 may be required by the Purchasing Agent when the circumstances warrant.

(b) *Amount.* Bid security shall be in an amount equal to at least five percent (5%) of the total amount of the bid including all options.

(c) *Rejection of bids for noncompliance with bid security requirements.* When the IFB requires security, noncompliance requires that the bid be rejected unless it is determined the bid fails to comply only in a non-substantial manner with the security requirements.

(d) *Withdrawal of bids.* If a bidder is permitted to withdraw its bid before award as provided in Article III Section 9 (g) no action shall be taken against the bidder or the bid security.

37. Contract performance and payment bonds.

(a) *When required; amounts.* When a construction contract is awarded in excess of $50,000.00, the following bonds or security shall be delivered to the District and shall become binding on the parties upon the execution of the contract:

(1) A performance bond satisfactory to the District , executed by a surety company authorized to do business in the state or otherwise secured in a manner satisfactory to the District , in an amount equal to one hundred percent (100%) of the price specified in the contract; and

(2) A payment bond satisfactory to the District , executed by a surety company authorized to do business in the state or otherwise secured in a manner satisfactory to the District , for the protection of all persons supplying labor and material to the contractor or its subcontractors for the performance of the work provided for in the contract. The bond shall be in an amount equal to 100% of the price specified in the contract.

(b) *Authority to require additional bonds.* The District retains the authority to require a performance bond or other security in addition to those bonds, or in circumstances other than specified in Subsection (a) of this section.

(c) *Suits on payment bonds; right to institute.* Unless otherwise authorized by law, any person who has furnished labor or material to the contractor or subcontractors, whether in an expressed or implied contract, for the work provided in the contract, for which a payment bond is furnished under this Section, and who has not been paid in full within 90 days from the date on which that person last performed the labor or supplied the material, shall have the right to sue on the payment bond for any amount unpaid at the time the suit is instituted upon giving written notice to the contractor within 90 days from the date on which that person last performed the labor or supplied the material. That person shall state in the notice the amount claimed and the name of the party to whom the material was supplied or for whom the labor was performed. The notice shall be served personally or by registered or certified mail, postage prepaid, in an envelope addressed to the contractor at any place the contractor maintains an office or conducts business.

(d) *Suits on payment bonds; where and when brought.* Unless otherwise authorized by law, every suit instituted upon a payment bond shall be brought in a court of competent jurisdiction within theDistrict's boundaries.

38. Copies of bond forms.

Any person may request and obtain from the District a certified copy of a bond upon payment of the cost of reproduction of the bond and postage, if any. A certified copy of a bond shall be prima facie evidence of the contents, execution and delivery of the original.

39. Architect-engineer and land surveying services.

(a) *Source selection.* The Purchasing Agent shall publicly issue either a multi-step RFP as in section 10(a) or an RFQ as in section 10(b) of Article III for the procurement of architect-engineer and land surveying services.

(b) *Selection process.* An evaluation committee will be appointed by the Executive Directoror his designee for general District departments, requiring architect-engineer or land survey services. The committee shall select, ranked in the order of their qualifications, those firms submitting SOQs deemed to be the most highly qualified to perform the required services, after considering the following criteria:

(1) Specialized design and technical competence of the business regarding the type of services required;

(2) Capacity and capability of the person, including any consultants, their representatives, qualifications, and locations, to perform the work, including any specialized services, within the time limitations;

(3) Past record of performance on contract with government agencies or private industry with respect to such factors as control of costs, quality of work and ability to meet schedules;

(4) Proximity to or familiarity with the area in which the project is located; and

(5) Price may be considered in connection with construction management contracts.

(c) *Negotiation.* The Purchasing Agent or designee shall negotiate a contract with the firm considered to be the most qualified for architect-engineer or land surveying services at compensation which the Purchasing Agent or designee determines in writing to be fair and reasonable to the District . In making this decision, the Purchasing Agent or designee shall take into account the estimated value, the scope, the complexity and the professional nature of the services to be rendered. Should the Purchasing Agent or designee be unable to negotiate a contract at a fair and reasonable price with the selected firm, the selection committee shall select additional firms in order of their competence and qualifications, and the Purchasing Agent or designee shall continue negotiations with the additional firms in the order of their competence and qualifications in accordance with this section until an agreement is reached.

40. Construction projects.

(a) Except as provided in section 40, a person selected to perform architect-engineer or land surveying services shall not be eligible for consideration for construction projects that result from the person's design or engineering services obtained separately from construction services.

(b) The successful person is not precluded from providing project management or construction management services for the design or engineering services which it has provided.

41. Design-build projects.

(a) A design-build project delivery system may be authorized when the Purchasing Agent makes a determination in writing that it is appropriate and in the best interest of the District to use the system on a specific project. The project may be construed to mean the initial desired outcome including any specific site for construction or alternate site that may be identified after a contract has been awarded. The determination shall be issued only after the Purchasing Agent has taken into consideration the following criteria, which shall be used as the minimum basis in determining when to use the design-build process:

(1) The extent to which the project requirements and possible options have been, or can be, adequately defined;

(2) Time constraints for delivery of the project;

(3) The capability and experience of potential teams with the design-build process;

(4) The suitability of the project for use of the design-build process as concerns special expertise, time, schedule, costs and/or quality; and

(5) The capability of the District to manage the project, including experienced personnel or outside consultants, and to oversee the project with persons who are familiar with the design-build process.

(b) When a determination has been made by the Purchasing Agent that it is appropriate to use a design-build project delivery system, the design-build team shall include, as needed, a state licensed engineer or architect, and a contractor properly licensed in New Mexico for the type of work required.

(c) For each proposed design-build project, a two-phase procedure for awarding design-build contracts shall be adopted and shall include at a minimum the following:

(1) During phase one, an RFQ shall be prepared for an engineer or architect teamed with a New Mexico licensed contractor in accordance with section 38 and shall include minimum qualifications, a scope of work statement and schedule, documents defining the project requirements, and a description of the phase two requirements and subsequent management needed to bring the project to completion. The qualifications of responding persons shall be evaluated and a maximum of five firms shall be short listed in accordance with technical and qualifications-based criteria; and

(2) During phase two, the short-listed persons shall be invited to submit proposals which include a "rough order of magnitude estimate", concepts or solutions, and scheduling. Unsuccessful short-listed persons may be paid a stipend as described in a particular RFP. After evaluations of these submissions, selection may be made and a contract awarded to the highest ranked team for the design and construction of the project upon the site identified in the solicitation or such other site as may be identified by District after award of the contract.

(3) The requesting department will establish design-build specifications and requirements for
each project that will strive for the delivery of a quality project on time and within budget.

ARTICLE VI.SUSPENSION OR DEBARMENT

42. Authority to suspend or debar.

(a) *Suspension.* After consultation with the District's Legal Counsel, the Purchasing Agent is authorized to suspend a person from consideration for award of contracts if there is probable cause to believe that the person has engaged in any activity which might lead to debarment. The suspension shall be for a period not to exceed three months.

(b) *Debarment.* After reasonable notice to the person involved and reasonable opportunity for that person to be heard, the Purchasing Agent, after consulting with the District's Legal Counsel, and notice to the Executive Director, is authorized to debar for cause a person from consideration for award of contracts. The debarment shall be for a period of not more than three years. The causes for debarment include the following:

(1) Conviction for commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract, or the performance or such contract or subcontract;

(2) Conviction under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property or any other offense indicating a lack of business integrity or business honesty which currently, seriously and directly affects responsibility as a District contractor;

(3) Conviction under state or federal antitrust statutes arising out of submission of bids or proposals;

(4) Violation of contract provisions within the past three years, as set forth below, of a character which is regarded by the Purchasing Agent to be so serious as to justify debarment action:

a. Deliberate failure without good cause to perform in accordance with the specifications or within the time limit provided in the contract; or

b. A recent record of preventable failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts.

(5) Any other cause the Purchasing Agent determines to be so serious and compelling as to affect responsibility as a Districtcontractor, including debarment by another governmental entity for any cause listed in this Article; and

(6) For violation of the ethical standards set forth in Article IX of this Chapter.

(7) Failure to disclose any of (1) through (6) above in a solicitation as may be requested.

43. Decision to suspend or debar.

The Purchasing Agent shall issue a written decision to suspend or debar. The decision shall state the reasons for the action taken and inform the suspended or debarred person involved of his/her rights concerning judicial or administrative review.

44. Notice of decision.

A copy of the decision required by Section 42 shall be mailed, postage pre-paid certified mail return receipt requested or otherwise furnished immediately to the suspended or debarred person.

45. Finality of decision.

A decision under Section 42 shall be final and conclusive unless the suspended or debarred person within 15 calendar days after receipt of decision takes an appeal to the District Board.

46. Appeal.

Any appeal to the District Board of an adverse decision shall be made by filing a notice of appeal with the Executive Director's office within 15 calendar days after the decision has been delivered to the aggrieved person. The proceeding before the District Board shall be de novo. The decision by the District Board under this subsection shall be final.The District Board's decision may be appealed pursuant to Section 39-3.1.1 and NMRA 1-074 to a court of competent jurisdiction within the District's boundaries.

ARTICLE VII. PROTESTS, APPEALS AND REMEDIES

47. Authority to resolve protested solicitations and awards.
The Purchasing Agent is responsible to address, process, and exercise the following:

(a) *Protests of bid or RFP specifications or scope of work.* Any vendor who is aggrieved in connection with the specifications or scope of work in a solicitation may protest to the Purchasing Agent. The protest shall be submitted in writing no later than 7 calendar days prior to the deadline for receipt of the bid or proposal. No protest bond will apply to such protest. The Purchasing Agent shall issue a determination in writing within 2 work days of receipt of such protest, and either proceed with the solicitation, modify it, or cancel it

(b) *Right to protest; protest bond.* Any actual or prospective bidder, offeror or contractor who is aggrieved in connection with the solicitation or award of a contract may protest to the Purchasing Agent. The protest shall contain all the grounds for such protest, and must be submitted in writing within 15 calendar days after such aggrieved person knows or should have known of the facts giving rise thereto, along with a bond provided by a surety company authorized to do business in the state, or the equivalent in cash, or otherwise supplied in a form satisfactory to the District. The amount of the bond shall not exceed the estimated cost to the District of processing and defending a protest. Only one protest per person per solicitation is permitted.

(c) *Authority to resolve protests.* The Purchasing Agent shall have the authority, prior to the commencement of an action in court concerning the controversy, to settle and resolve a protest of an aggrieved bidder, offeror or contractor, actual or prospective, concerning the solicitation or award of a contract.

(d) De*cision.* If the protest is not resolved by mutual agreement, the Purchasing Agent shall promptly issue a decision in writing stating the reason for the action taken and informing the protestant of its right to appeal the decision to the District Board. A copy of the decision of the Purchasing Agent shall be mailed, return receipt requested, or hand-delivered to the protestant or to the address provided in the protest.

(e) *Appeal.* Any appeal to the District Board of an adverse decision shall be made by filing with the Executive Director's office within 15 calendar days after the decision has been delivered to the aggrieved person. The proceeding before the Board shall be de novo. The Board shall decide whether the solicitation or award was in accordance with this Policy, procedures, and the terms and conditions of the solicitation.

(f) *Decisions final.* A decision of the District Board under this Section shall be final and conclusive. The aggrieved person may seek judicial review in the state First Judicial District Court within 30 days of the receipt of notice of the decision of the District Board.

(g) S*tay of procurements during protests.* In the event of a timely protest under subsection (a) of this section, the Purchasing Agent shall not proceed further with the solicitation or with the award of the contract unless the Purchasing Agent, after consultation with the Executive Director, makes a written determination that the award of the contract without delay is necessary to protect substantial interests of the District.

(h) *Entitlement to costs.*

(1) When a protest is sustained and the protesting bidder or offeror should have been awarded the contract under the solicitation but was not, then the protesting bidder or offeror shall be entitled, in addition to any other relief, to the reasonable costs incurred in connection with the protest or appeal costs other than attorney's fees.

(2) Should the protest be denied, the District shall be entitled to recover reasonable costs for processing and adjudicating the protest, and for costs associated with an unreasonable delay of the contract. Recovery of these costs shall not be limited to the proceeds from the protest bond. Excess bond proceeds shall be returned to the person.

48. Contract Claims.

Claims include, without limitation, disputes arising under a contract, and those based upon breach of contract, mistake, misrepresentation or other cause for contract modification or rescission. Within15 calendar days of the time the contractor knows or should have known of the facts and circumstances giving rise to a claim the following procedure shall apply:

(a) *Notice of claim to the Purchasing Agent.* All claims by a contractor against the District relating to a contract except bid protests shall be submitted in writing to the Purchasing Agent for decision. The contractor may request a conference with the Purchasing Agent on the claim.

(b) *Notice to the contractor of the Purchasing Agent's decision.* The decision of the Purchasing Agent shall be issued in writing within 15 calendar days of claim notice and immediately mailed, or otherwise furnished, to the contractor. The decision shall state reasons for the decision reached, and shall inform the contractor of its appeal rights under subsection (d) of this section.

(c) *Failure to render timely decision.* If the Purchasing Agent does not issue a written decision regarding any contract controversy within 15 days after written request for a final decision, or within such longer period as may be agreed upon between the parties, then the aggrieved party may proceed as if an adverse decision had been received.

(d) *Appeal.* Any appeal to the District Board of an adverse decision shall be made by filing with the Executive Directors office within 15 calendar days after the decision has been received by the aggrieved person. The proceeding before the District Board shall be de novo.

(e) *Decisions by Board final; exception.* A decision of the District Board under this section shall be final and conclusive unless a protestant seeks judicial review in the state First Judicial District Court within 30 days of the receipt of notice of the decision of the District Board.

49. Remedies for solicitations or awards in violation of law.

(a) *Prior to bid opening or closing date for receipt of proposals.* If, prior to the bid opening or the closing date for receipt of proposals, the Purchasing Agent, after consultation with the District Attorney, determines that a solicitation is in violation of applicable law or regulation then the solicitation shall be canceled by the Purchasing Agent or revised to comply with applicable law.

(b) *Prior to award.* If, after bid opening or the closing date for receipt of proposals, the Purchasing Agent, after consultation with the District Legal Counsel, determines that a solicitation or a proposed award of a contract is in violation of applicable law then the solicitation or proposed award shall be canceled by the Purchasing Agent.

(c) *After award.* If, after an award, the Purchasing Agent, after consultation with the District Legal Counsel, determines that a solicitation or award of a contract was in violation of applicable law, then:

If neither the purchaser nor the person awarded the contract has acted fraudulently or in bad faith:

a. The contract or invoice may be ratified and affirmed or approved for payment by the Board for any amount or the Executive Director, as applicable, for amounts under $100,000.00, provided that it is determined that doing so is in the best interests of the District ; or

b. The contract may be terminated and the person awarded the contract shall be compensated for the actual costs reasonably incurred under the contract, plus a reasonable profit, prior to the termination; or

If either the purchaser or the person awarded the contract has acted fraudulently or in bad faith, the contract may be declared null and void by the Purchasing Agent, if such action is in the best interests of the District.

50. Procurement violations.

Unauthorized Purchases. Any Purchase which is not legally and appropriately approved within the budget or by other NCRTD action, or which does not substantially comply with the provisions of this policy shall be considered an unauthorized purchase, and thereby not subject to payment by the District. The District hereby declares and establishes that it will assume no responsibility for payment of unauthorized purchases. Furthermore, any individual initiating or otherwise executing any unauthorized purchase is solely responsible for payment and may be subject to disciplinary action up to and including dismissal. All authorized purchases shall be legally budgeted or approved within an appropriate fund or agency account, or within an appropriate line item as approved by the Executive Director. All questionable purchases shall be submitted to the Executive Director for review and a determination shall be made by the Executive Director regarding the purchase being an authorized or unauthorized purchase under the provisions of this policy.

ARTICLE VIIIETHICS IN PUBLIC CONTRACTING

51. Employee conflict of interest.

(a) Unless waived under Section 54, it shall be unethical and unlawful for any District employee to participate directly or indirectly in any procurement when the District employeeknows that:

(1) The District employee or any member of the District employee's immediate family has a financial interest pertaining to the procurement; or

(2) Any other person with whom the District employee or any member of a District employee's immediate family is negotiating or has an arrangement concerning prospective employment is involved in the procurement contract.

(b) A District employee or any member of a District employee's immediate family who holds a financial interest in a disclosed blind trust shall not be deemed to have a conflict of interest with regard to matters pertaining to that financial trust.

52. Gratuities and kickbacks.

(a) It shall be unlawful for any person to offer, give or agree to give any District employee or former District employee, or for any District employee or former District employee to solicit, demand, accept or agree to accept from another person, a gratuity or an offer of employment in connection with:

(1) any decision, approval, disapproval, recommendation, or preparation of any part of a program requirement or a purchase requisition;

(2) influencing or developing the content or any specifications or procurement standard, except as a result of a published Request for Information;

(3) assisting in rendering of advice, investigation, auditing or in any other advisory capacity in proceeding or application, request for ruling, determination, claim or controversy, or other particular matter, pertaining to any program requirement or a contract or subcontract, or to any solicitation or proposal thereof; or

(4) accepting any payment, gratuity or offer of employment to be made by or on behalf of a subcontractor or higher tier subcontractor or any person associated therewith as an inducement for the award of a subcontract or order.

(b) *Contract and solicitation clause.* The prohibition against gratuities and kickbacks prescribed in this section shall be conspicuously set forth in every contract and solicitation.

53. Prohibition against contingent fees.

It shall be unethical and unlawful for a person to be retained, or to retain a person, to solicit or secure a District contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, except for retention of bona fide employees or bona fide established commercial selling agencies for the purpose of securing business.

54. Contemporaneous employment.

It shall be unethical and unlawful for any District employee who is participating directly or indirectly in the procurement process to become or to be, while a District employee, the employee of any person contracting with the governmental body by which the employee is employed.

55. Waivers from contemporaneous employment prohibition and other conflicts of interest.

The District Board may grant a waiver from the employee conflict of interest provision (Section 50) or the contemporaneous employment provision (Section 53) upon making a written determination that:

(1) The contemporaneous employment or financial interest of the District employee has been publicly disclosed prior to solicitation;

(2) The District employee will be able to perform its procurement functions without actual or apparent bias or favoritism; and

(3) The award will be in the best interests of the District.

56. Use of confidential information.

It shall be unethical and unlawful for any employee or former employee knowingly to use confidential information for actual or anticipated personal gain, or for the actual or anticipated personal gain of any other person.

57. Sanctions.

In addition to any civil or criminal penalties or fines imposed by federal or state law, the following shall apply:

(a) *Employees.* The Executive Director may impose any one or more of the following sanctions on a District employee for violation of the ethical standards set forth in this division:

(1) Oral or written warning or reprimands;

(2) with or without pay for specified periods of time; or

(3) Termination of employment.

(b) *Other Persons.* The Purchasing Agent may impose any one or more of the following sanctions on a person for violations of the ethical standards:

(1) Written warnings or reprimands;

(2) Termination of contracts; or

(3) Suspension or debarment as provided in Section 41.

58. Recovery of value transferred or received in violation of the Code.

(a) *Generally.* The District may use any and all legal and equitable remedies to recover the value of anything transferred or received in breach of the ethical standards of this Policy by a District employee or other person.

(b) *Recovery of kickbacks by the District.* Upon a showing that a subcontractor made a kickback to a prime contractor or a higher tier subcontractor in connection with the award of a subcontract or order thereunder, it shall be conclusively presumed that the amount was included in the price of the subcontract or order and ultimately borne by the District and will be recoverable hereunder from the recipient. In addition, that amount may also be recovered from the subcontractor making such kickbacks. Recovery from one offending party shall not preclude recovery from other offending parties.

59. Severability.

If any provision or application of these regulations is held invalid, such invalidity shall not affect any other provision or application of these regulations which be given effect without theinvalidprovision or application.

60. Effective Date.

This Resolution shall be effective upon adoption.

ADOPTED this ____ day of_____ , 2012.

North Central Regional Transit District

_____

Daniel Barrone, Chairman

Approved as to form:

_____

Peter Dwyer, Counsel